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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 ELECTRONIC FRONTIER FOUNDATION,)
16)

17 Plaintiff,)

18 vs.)

19 DEPARTMENT OF DEFENSE, ET AL.,)
20)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No. 3:09-CV-05640-SI

**STIPULATION AND ~~[PROPOSED]~~
ORDER TO AMEND BRIEFING
SCHEDULE**

1 Pursuant to Federal Rule of Civil Procedure 6(b)(1) and Civil L.R. 6-2, Plaintiff Electronic
2 Frontier Foundation (“EFF”) and Defendants Department of Justice, Criminal Division; U.S. Secret
3 Service; Federal Bureau Investigation; and Department of Homeland Security (collectively
4 “Defendants”) hereby stipulate to and respectfully request that this Court extend the briefing
5 schedule for the filing of the parties’ reply briefs related to their dispositive motions. Defendants
6 requested the revisions to the briefing schedule due to the illness of Defendants’ counsel.

- 7
- 8 1. Defendants submit that the Declaration of Kimberly L. Herb establishes good cause for
9 the requested enlargement as follows:
 - 10 a. On September 22, 2011, the parties filed a stipulation proposing the following dates
11 for briefing on the parties dispositive motions: Defendants file their motion for
12 summary judgment on October 21, 2011; EFF files its opposition and cross-motion
13 on November 18, 2011; Defendants file their reply and opposition to EFF’s cross-
14 motion on December 2, 2011; EFF files its reply to its cross- motion on December
15 16, 2011; the Court holds a hearing on the parties’ dispositive motions on January
16 13, 2012. The Court granted the parties’ stipulation on September 27, 2011. (Dkt.
17 54.)
 - 18 b. Defendants filed their motion for summary judgment on October 21, 2011. (Dkt.
19 55.) EFF filed its opposition to Defendants’ motion and cross moved for summary
20 judgment on November 17, 2011. (Dkt. 56.)
 - 21 c. Counsel for Defendants became ill on November 21, 2011 with respiratory and
22 sinus infections. She has been out of the office for much of the last ten days due to
23 illness and reactions to medication. As a result, she has not had adequate time to
24 prepare Defendants’ reply brief and requested that EFF grant an extension of the
25 briefing schedule.
 - 26 d. On December 1, 2011, defense counsel conferred with EFF’s counsel regarding the
27 briefing schedule for the parties’ reply brief related to their dispositive motions.
28 The parties agreed to revise the briefing schedule as follows: Defendants file their

2. While the requested enlargement will affect the present briefing schedule for this case, the parties believe a short extension of the briefing schedule is warranted given the circumstances. Furthermore, the parties believe this case will be resolved on summary judgment, and thus this case can be resolved expeditiously after the filing of the parties' motions.

The parties respectfully request that the Court extend the briefing schedule for the filing of the parties' dispositive motions such that they may be filed as discussed in paragraph 1(d) above.

DATED: December 2, 2011

Respectfully submitted,

/s/ Jennifer Lynch

ELECTRONIC FRONTIER FOUNDATION

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Attorneys for Plaintiff

Attorneys for Defendants

GENERAL ORDER NO. 45(X) CERTIFICATION

I attest that I have obtained Jennifer Lynch's concurrence in the filing of this document.

/s/ Kimberly L. Herb

Kimberly L. Herb

* * *

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 12/6/11



Hon. Susan Ilston

United States District Judge

1 TONY WEST
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2 MELINDA L. HAAG
United States Attorney
3 JOHN TYLER
Assistant Branch Director
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 ELECTRONIC FRONTIER FOUNDATION,
15 Plaintiff,
16 v.
17 DEPARTMENT OF DEFENSE, *et al.*,
18 Defendants.
19

Case No. CV 09-5640 SI

**DECLARATION OF KIMBERLY L.
HERB IN SUPPORT OF STIPULATION
TO AMEND BRIEFING SCHEDULE**

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21 I, Kimberly L. Herb, hereby declare as follows:

22 1. I am a Trial Attorney in the Federal Programs Branch, Civil Division of the United
23 States Department of Justice. I am lead counsel and represent Defendants in this case.

24 2. On September 22, 2011, the parties filed a stipulation proposing the following
25 dates for briefing on the parties dispositive motions: Defendants file their motion for summary
26 judgment on October 21, 2011; EFF files its opposition and cross-motion on November 18, 2011;
27 Defendants file their reply and opposition to EFF's cross-motion on December 2, 2011; EFF files
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1 its reply to its cross- motion on December 16, 2011; the Court holds a hearing on the parties'
2 dispositive motions on January 13, 2012. The Court granted the parties' stipulation on September
3 27, 2011. (Dkt. 54.)

4 3. Defendants filed their motion for summary judgment on October 21, 2011. (Dkt.
5 55.) EFF filed its opposition to Defendants' motion and cross moved for summary judgment on
6 November 17, 2011. (Dkt. 56.)

7 4. I became ill on November 21, 2011 with respiratory and sinus infections. I have
8 been out of the office for much of the last ten days due to illness and reactions to medication. As
9 a result, I have not had adequate time to prepare Defendants' reply brief and requested that EFF
10 grant an extension of the briefing schedule.

11 5. On December 1, 2011, defense counsel conferred with EFF's counsel regarding
12 the briefing schedule for the parties' reply briefs related to their dispositive motions. The parties
13 agreed to revise the briefing schedule as follows: Defendants file their reply brief in support of
14 Defendants' motion for summary judgment and opposition to EFF's cross-motion for summary
15 judgment on December 16, 2011; EFF files its reply for its cross-motion on January 6, 2012; the
16 Court holds a hearing on the parties' dispositive motions on January 20, 2012.

17 6. To date, there have been seven time modifications in this case:

- 18 a. On June 10, 2010, the parties filed a stipulation and proposed order requesting
19 that the Court change the time for the filing of dispositive motions, which the
20 Court granted on July 6, 2010.
- 21 b. On July 9, 2010, the parties filed a Joint Case Management Statement and
22 appeared for the Case Management Conference on July 16, 2010. At that time
23 the parties informed the court that they planned to meet and confer by August
24 31, 2010 to determine the issues remaining in this action and to propose a
25 timeline for the resolution of those issues. The parties met again on August 30,
26 2010 and discussed a tentative motion schedule as well as Defendant
27 Department of Justice Criminal Division's final document production,
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1 scheduled for September 30, 2010. Because Plaintiff needed time to review
2 Defendant's final disclosures, on September 3, 2010, the parties filed a
3 stipulation and proposed order to continue the Case Management Conference.
4 The Court granted the motion on September 8, 2010 and continued the Case
5 Management Conference to October 26, 2010.

- 6
7 c. On October 19, 2011, the parties filed a stipulation and proposed order to
8 continue the Case Management Conference because the parties had submitted
9 a proposed schedule for resolution of the case. The Court granted the motion
10 on October 21, 2010 and continued the Case Management Conference to
11 January 14, 2011.
- 12 d. On January 7, 2011, the parties filed a stipulation and proposed order to change
13 the time of the Case Management Conference from January 14, 2011 to
14 January 28, 2011. EFF had filed a motion to consolidate the present action
15 with a related case, and the motion was scheduled for a hearing on January 28,
16 2011. The parties' stipulation sought to consolidate the hearing with the Case
17 Management Conference. The Court granted the parties' stipulation on
18 January 10, 2011.
- 19 e. On January 27, 2011, the parties filed a stipulation and proposed order to
20 change the time of the Case Management Conference from January 28, 2011 to
21 February 25, 2011. The Court granted EFF's motion to consolidate and
22 ordered the parties to confer regarding a briefing schedule for the filing of
23 dispositive motions in the consolidated action. The parties sought to continue
24 the Case Management Conference so that they could negotiate the briefing
25 schedule. The Court granted the parties' stipulation on January 28, 2011.
- 26 f. On February 25, 2011, during the Case Management Conference, the parties
27 presented the Court with a joint proposed briefing schedule for the filing of
28 dispositive motions. The proposed briefing schedule amended an earlier

1 schedule for the filing of such motions and was necessitated by the Court's
2 order consolidating cases. The Court granted the parties' joint briefing
3 schedule on March 1, 2011.

4 g. On September 22, 2011, the parties stipulated to extend the briefing schedule
5 for the filing of dispositive motions due to the unavailability of counsel for one
6 of the defendant agencies. The Court granted the parties' stipulation on
7 September 27, 2011.

8 7. While the requested enlargement will affect the present briefing schedule for this
9 case, the parties believe a short extension of the briefing schedule is warranted given the
10 circumstances. Furthermore, the parties believe this case will be resolved on summary judgment,
11 and thus this case can be resolved expeditiously after the filing of the parties' motions.
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14 I declare under penalty of perjury that the foregoing is true and correct. Executed in
15 Washington, DC on December 1, 2011.

16 /s/ Kimberly L. Herb
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